IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.439 OF 2007

Bharat Dahanukar ...Petitioner

V/s.

M/s.The Federal Bank Limited & Anr. ...Respondents

Mr.Subhash Jha i/b. M/s. Law Global for Petitioner.
Ms.Nita Singh i/b. Mahesh Menon & Co. for Respondent No.1.
Mr.Y.M. Nakhawa APP for the State.

CORAM : V.M. KANADE, J.
DATED : 1st NOVEMBER, 2007.

P.C:-

1. Heard learned counsel for the Petitioner and learned counsel for the Respondents.

2. Petitioner is challenging the order of issuance of process by the Trial Court in a complaint filed by the Respondent No.1 U/s.138 of N.I. Act. Learned counsel for the Petitioner submitted that Petitioner was one of the Directors of Company. However, he had retired long ago and therefore, he was not concerned and never was in charge of the day to day affairs of the Company. He further submitted that there were no specific averments attributing any role to the Petitioner in the complaint and therefore the order

of issuance of process was liable to be set aside.

3. In support of his submission, he relied on the judgment of the Apex Court in the case of **S.M.S. Pharmaceuticals Ltd. V/s. Neeta Bhalla and Anr. reported in (2007)4 SCC 70** and also on number of other judgments. On the other hand, learned counsel for the Respondent No.1 submitted that process was issued in the year 1998 and this Writ Petition was filed in the month of March, 2006. This Court by order and judgment dated 22th December, 2006 (CORAM:A.S. OKA, J.) directed the Petitioner to file revision application in the Sessions Court. This revision application was also dismissed. It is submitted that in the meanwhile, plea of the accused has been recorded, examination in chief of the Complainant has already been recorded and cross examination has commenced. She submitted that in view of fact that plea is already recorded, this Court may not entertain writ petition which is filed by the Petitioner U/s.482 of Cr.P.C. and under Article 227 of Constitution of India. She relied on the judgment of the Apex Court the case of **Subramanium Sethuraman V/s. State of Maharashtra & Anr. Reported in 2004 AIR SCW 5326**. She also relied on the unreported judgment of this Court in the case of **Smt. Kalpana V. Shah & Anr. V/s. Bipin Gandhi & Anr.**(CORAM:S.K. SHAH, J.) dated 3rd May,

2006.

4. Learned counsel for the Petitioner, on the other hand, submitted that in the case of **S.M.S. Pharmaceuticals Ltd.(supra)** and other matters also, the Apex Court was pleased to quash proceedings though more than eight to ten years have elapsed after process was issued. He invited my attention to the relevant dates in the said reported judgment. He submitted that litigants had statutory right to approach this Court in the event there was abuse of process and seek justice U/s.482 of Cr.P.C. and question of limitation in filing this application did not arise.

5. There cannot be any dispute about the ratio laid down in the case of **S.M.S. Pharmaceuticals Ltd.(supra)** and other judgments wherein the Apex Court has held that mere vague allegations against the Directors or the Company would not constitute offence punishable U/s.138 r/w 141 of N.I. Act and that in order to rope in any Director by way of vicarious liability something more had to be said in the complaint. Fact remains that process was issued in the year 1998. Plea of the accused has already been recorded. Trial is commenced and as observed by the Apex Court in the case of **Subramanium Sethuraman(supra)**, trial once having commenced,

it should reach its logical conclusion and at this stage, it is not possible to interfere with the order of issuance of process which was issued 10 years ago. It would be profitable to consider the observations made by the Apex Court in the case of **Subramanium Sethuraman(supra)** more particularly in para No.16 and 19 which read as under:-

> 16. The next challenge of the learned counsel for the appellant made to the finding of the High Court that once a plea is recorded in a summons case it is not open to the accused person to seek a discharge cannot also be accepted. The case involving a summons case is covered by Chapter XX of the Code which does not contemplates a stage of discharge like Section 239 which provides for a discharge in a warrant case. Therefore, in our opinion the High Court was correct in coming to the conclusion once the plea of the accused is recorded under Section 252 of the Code the procedure contemplated under Chapter XX has to be followed which is to take the trial to its logical conclusion.
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> 19. We see that this Court while dismissing earlier S.L.P. as withdrawn had left the question of legality of the notice open to be decided at the trial. Therefore, legitimately the appellant should raise this issue to be decided at the trial. Be that as it may, we cannot prevent an accused person from taking recourse to a remedy which is available in law.

> In Adalat Prasad's case we have held that for an aggrieved person the only course available to challenge the issuance of process under Section 204 of the Code is by way of a petition under Section 482 of the Code. Hence, while we do not grant any permission to the appellant to file a petition under Section 482, we cannot also deny him the statutory right available to him in law. However, taking into consideration the history of this case, we have no doubt the concerned Court entertaining the application will also take into considerations i.e. raised by the respondent in this case as to delay i.e. being caused by the entertainment of applications and petitions filed by the accused."

6. Same view has been taken by the learned single judge of this Court in Criminal Writ Petition No.2028/04. In my view, therefore, under these circumstances, it is not possible to interfere with the impugned order at this stage.

7. It is made clear that questions raised in this petition are open and the Trial Court shall not be influenced by any observations made herein and the same shall have no bearing on the merits of the case. Petitioner is exempted from appearing in the Trial Court during the Trial. The Trial Court shall decide the case as expeditiously as possible and in any case,

within a period of six months. With these clarifications writ petition is dismissed and disposed of accordingly.

V.M. KANADE, J.